

ORDINANCE NO. 09-50

ORDINANCE GRANTING A VARIANCE PERMIT TO ALLOW A TOTAL OF 15 PARKING SPACES, WHERE 38 PARKING SPACES ARE REQUIRED, ALLOW BACKING OUT INTO THE STREET, WHERE ONLY ALLOWED IN LOW DENSITY RESIDENTIAL DISTRICTS, TO ALLOW A 10% PERVIOUS AREA, WHERE A MINIMUM OF 18% IS REQUIRED, AND TO ALLOW A REAR SETBACK OF 0.92 FEET, WHERE 15 FEET ARE REQUIRED, CONTRA TO HIALEAH CODE §§ 98-2189(8), 98-2186, 98-1117, 98-1071, AND 98-2231(a). **PROPERTY LOCATED AT 2380-2390 PALM AVENUE, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of May 27, 2009 recommended approval of this ordinance; and

WHEREAS, the petitioner proffered a Declaration of Restrictive Covenants limiting the use of two parking spaces strictly as drop-off parking, limiting the number of employees to the remaining available number of parking spaces, not including the drop-off parking, prohibiting the adults utilizing the facilities from driving to or parking on the property, to build the facility in substantial compliance with the approved site plan, and consenting to the repeal of the parking variance if the property ceases to be used as an adult daycare facility, to which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance is hereby adopted and incorporated as if fully set forth herein.

Section 2: The below-described property is hereby granted a variance permit to allow a total of 15 parking spaces, where 38 parking spaces are required, 5 of which

back out into the street, where allowed only in low density residential districts, to allow a 10% pervious area, where a minimum of 18% is required, and to allow a rear setback of 0.92 feet, where 15 feet are required, contra to Hialeah Code §§ 98-2189(8), 98-2186, 98-1117, 98-1071, and 98-2231(a), which provide in pertinent part: "*Day care centers, child care facilities, kindergarten and preelementary schools. One parking space for each 400 square feet of gross floor area.*", "Backout parking shall be allowed in low density residential districts or areas.", In the C-2 liberal retail commercial district, the floor area shall be the same as in the C-1 district.", "In the C-1 restricted retail commercial district, there shall be a rear yard of not less than 15 feet in depth", and "Required landscaping that is installed according to this Code and the latest edition of the Miami-Dade County Landscape Manual as modified and supplemented by the city landscape manual", respectively. Property located at 2380-2390 Palm Avenue, Hialeah, Miami-Dade County, Florida, zoned C-2 (Liberal Retail Commercial District), and legally described as follows:

LOTS 10, 11, 12, AND 13, IN BLOCK 152, OF "TENTH ADDITION TO THE TOWN OF HIALEAH", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 8, AT PAGE 100, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not

to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.


PASSED and ADOPTED this 23rd day of June, 2009.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.


Carlos Hernandez
Council President

Attest:

Approved on this 29 day of June, 2009.


Rafael Granado, City Clerk


Mayor Julio Robaina

Approved as to legal sufficiency and as to form:


William M. Grodnick, City Attorney

S:\LEB\LEGISLATION\2009 ORDINANCES\2380-2390PalmAve-parking-backout-pervious-rearSB-MAY27-09.doc

Ordinance was adopted by a 5-0 vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Hernandez, Yedra voting "Yes" and Councilmembers Garcia-Martinez and Gonzalez absent.